



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Department of Medical Assistance Services |
| Virginia Administrative Code (VAC) citation | 12 VAC 30-20-210 and 12 VAC 30-20-211 |
| Regulation title | Administration of Medical Assistance Services: State method on cost effectiveness of employer-based group health plans – individual and family plans |
| Action title | HIPP Cost Effectiveness Methodology |
| Document preparation date | |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(ii) as discussed below.

Chapter 781, Item 306 AAA of the 2009 Appropriation Act directed the Department of Medical Assistance Services (DMAS) to amend the State Plan for Medical Assistance to clarify that existing family healthcare coverage is a factor in the determination of cost effectiveness under the Health Insurance Premium Payment program (HIPP). Cases which result in a determination that participation is not cost effective shall be denied premium assistance. This action is intended to satisfy that mandate.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Administration of Medical Assistance Services: State method on cost effectiveness of employer-based group health plans – individual and family plans (12 VAC 30-20-211) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action is intended to clarify that the cost effectiveness evaluation includes whether family healthcare coverage exists at time of application as factor in the cost evaluation process per the requirement of the 2009 Appropriations Act. Upon implementation of this change, having existing family health care coverage at time of application will be considered in the cost evaluation determination. This change will require the amendment of regulations addressing HIPP eligibility, family healthcare coverage, and a clarification of the cost-effectiveness methodology. These changes are needed to ensure that HIPP payments made for the participants enrolled in the HIPP program are cost effective for the State.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a] provides governing authority for payments for services. **Item 306 AAA** of the 2009 Appropriations Act states: "Effective July 1, 2009, the Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to clarify that existing family healthcare coverage is a factor in

the determination of cost effectiveness under the Health Insurance Premium Payment program. Cases which result in a determination that participation is not cost effective shall be denied premium assistance.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The need for this action arose from the mandate of Item 306 AAA of Chapter 781 of the 2009 Acts of the General Assembly.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The Medicaid State Plan section affected by this regulatory action is State method on cost effectiveness of employer-based group health plans (12 VAC 30-20-211).

When the HIPP program was enacted in 1991 by the federal government it was envisioned as a means to reduce the cost of the Medicaid program by shifting the cost of medical expenses onto the employer health plan if one was available. The HIPP regulations require a cost effectiveness determination for enrollment. Cost effectiveness is defined as meaning that it is likely to cost the state less to pay the employee’s share of the health insurance premium and any cost sharing items for the Medicaid eligible household members, than it would cost otherwise under Medicaid. Medicaid enrollees whose eligibility is not determined based on family household income are likely to be covered under a family health insurance policy which includes the entire family. In these instances it is unlikely that the health insurance would be dropped for one household member who has Medicaid coverage as the cost of the family coverage would be the same regardless of the number of family members in a family plan. Therefore, there is no benefit for the State to enroll the participants in HIPP who would otherwise remain enrolled in the family health insurance if HIPP were not available.

In recent years as a result of increased insurance costs, many health care plans have adopted "high deductible" plans. A high deductible health plan (HDHP) is defined in section 232(c)(2) of the Internal Revenue Code of 1986. The Department of Treasury updates the deductible amounts on an annual basis. These plans were nonexistent at the inception of the HIPP program; however, they have become more prevalent in recent years as health care premiums have increased. Because the Medicaid eligibility only exists on a month to month basis, Medicaid would be paying all medical expenses until the deductible is met as well as the monthly premium, HDHPs have been determined to be not cost effective for the HIPP program.

Inclusion of this language provides clarity to the process that is currently followed today and allowed under federal regulations.

Program participation requirements have been defined to ensure participants initially found eligible continue to meet the cost effectiveness requirements. Additionally, program termination reasons have been included in the regulations. Current regulations provided reasons for terminating payments, however, nothing was defined regarding termination from the program. Including termination reasons gives clear authority to terminate participation in the program when participation requirements are not met.

These emergency regulations respond to the General Assembly mandate clarifying several aspects of the HIPP cost effectiveness methodology, including promulgating several new definitions, addressing family healthcare issues with regard to HIPP.

Please note: Concurrent with this regulatory action, 12 VAC 30-20-210 is the subject of a fast-track regulatory action. Due to the difficulties of effecting changes in this section at the time another action is taking effect in the same regulatory subsection, DMAS has elected to make these emergency changes both in 21 VAC 30-20-210 and in a new mirror image subsection, 12 VAC 30-20-211. The only change in this action with respect to 12 VAC 30-20-210 is the deletion of 12 VAC 30-20-~~210~~(6) -- guidelines for determining cost effectiveness. This methodology is being replaced by another cost effectiveness methodology described in 12 VAC 30-20-~~210~~(C). DMAS did not want to make any changes in 12 VAC 30-20-210 that were not absolutely necessary in order to avoid confusing and possibly conflicting requirements. Subsection 12 VAC 30-20-210(6) is being deleted because it would contradict the methodology being described in the emergency regulation at 12 VAC 30-20-211(C). Because the newly implemented text of 12 VAC 30-20-210 will be final and effective at the time DMAS publishes the proposed regulations that will follow this emergency action, DMAS intends to insert all the emergency changes from 12 VAC 30-20-211 into 12 VAC 20-30-210. This will leave only 12 VAC 30-20-210 as the only regulatory subsection in this action at the proposed and final stages.

Please also note: DMAS intends to address several other issues in the proposed and final regulations that follow this emergency action, and hereby gives notice of the Agency's intention to modify 12 VAC 30-20-210 to address several issues pertinent to the HIPP program, but which are not part of Chapter 781, Item 306 AAA of the 2009 Appropriation Act. These issues include, but are not limited to, requirements regarding consent forms in the HIPP program, termination from the program, and program participation requirements.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no viable alternatives to this proposed regulatory action. Item AAA of the 2009 Appropriations Act directed DMAS to make this change. Absent this action, DMAS will be out of compliance with a General Assembly mandate.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

DMAS is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Patricia Taylor, Dept. of Medical Asst. Services, 600 East Broad St., Richmond, Virginia, 23219. (804) 371-6333, Fax: (804) 786-1680. Patricia.Taylor@dmas.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period. A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DMAS will use the participatory approach to develop a proposal if it receives at least 25 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; it does encourage greater economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.